

1                   A bill to be entitled  
2           An act relating to nursing facilities; amending  
3           s. 400.121, F.S.; providing procedure for  
4           administrative hearings on certain actions to  
5           deny, suspend, or revoke a nursing facility's  
6           license; creating s. 400.215, F.S.; requiring  
7           background screening for certain nursing  
8           facility employees; providing requirements for  
9           employers and employees; authorizing  
10          conditional status for certain employees;  
11          requiring the Agency for Health Care  
12          Administration to establish and maintain a  
13          database and provide certain information;  
14          providing for screening fees; providing for  
15          exemptions from disqualification; providing an  
16          exemption from rescreening for certain persons;  
17          providing for certain sharing of screening  
18          information among employers; providing for  
19          adoption of rules; specifying dates and  
20          conditions for compliance by employees and new  
21          applicants; repealing s. 400.211(5), F.S.,  
22          relating to screening requirements for  
23          certified nursing assistants; providing an  
24          effective date.

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26 Be It Enacted by the Legislature of the State of Florida:

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28           Section 1. Subsection (5) is added to section 400.121,  
29 Florida Statutes, to read:

30           400.121 Denial, suspension, revocation of license;  
31 moratorium on admissions; administrative fines; procedure.--

1           (5) An action taken by the agency to deny, suspend, or  
2 revoke a facility's license under this part, in which the  
3 agency claims that the facility owner or an employee of the  
4 facility has threatened the health, safety, or welfare of a  
5 resident of the facility, shall be heard by the Division of  
6 Administrative Hearings of the Department of Management  
7 Services within 120 days after receipt of the facility's  
8 request for a hearing, unless the time limitation is waived by  
9 both parties. The administrative law judge must render a  
10 decision within 30 days after receipt of a proposed  
11 recommended order. This subsection does not modify the  
12 requirement that an administrative hearing be held within 90  
13 days after a license is suspended under paragraph (4)(b).

14           Section 2. Section 400.215, Florida Statutes, is  
15 created to read:

16           400.215 Personnel screening requirement.--

17           (1) The agency shall require background screening as  
18 provided in chapter 435 for all employees or prospective  
19 employees of facilities licensed under part II who are  
20 expected to, or whose responsibilities may require them to:

21           (a) Provide personal care or services to residents;

22           (b) Have access to resident living areas; or

23           (c) Have access to resident funds or other personal  
24 property.

25           (2) Employers and employees shall comply with the  
26 requirements of s. 435.05.

27           (a) Notwithstanding the provisions of s. 435.05(1),  
28 facilities must have in their possession evidence that level 1  
29 screening has been completed before allowing an employee to  
30 begin working with patients as provided in subsection (1). All  
31 information necessary for conducting background screening

1 using level 1 standards as specified in s. 435.03(1) and for  
2 conducting a search of the central abuse registry and tracking  
3 system as specified in s. 435.03(3)(a) shall be submitted by  
4 the nursing facility to the agency. Results of the background  
5 screening and the abuse registry check shall be provided by  
6 the agency to the requesting nursing facility.

7 (b) Employees qualified under the provisions of  
8 paragraph (a) who have not maintained continuous residency  
9 within the state for the 5 years immediately preceding the  
10 date of request for background screening must complete level 2  
11 screening, as provided in chapter 435. Such employees may work  
12 in a conditional status up to 180 days pending the receipt of  
13 written findings evidencing the completion of level 2  
14 screening. Level 2 screening shall not be required of  
15 employees or prospective employees who attest in writing under  
16 penalty of perjury that they meet the residency requirement.  
17 Completion of level 2 screening shall require the employee or  
18 prospective employee to furnish to the nursing facility a full  
19 set of fingerprints to enable a criminal background  
20 investigation to be conducted. The nursing facility shall  
21 submit the completed fingerprint card to the agency. The  
22 agency shall establish a record of the request in the database  
23 provided for in paragraph (c) and forward the request to the  
24 Department of Law Enforcement, which is authorized to submit  
25 the fingerprints to the Federal Bureau of Investigation for a  
26 national criminal history records check. The results of the  
27 national criminal history records check shall be returned to  
28 the agency, which shall maintain the results in the database  
29 provided for in paragraph (c). The agency shall notify the  
30 administrator of the requesting nursing facility or the  
31 administrator of any other facility licensed under chapter

1 393, chapter 394, chapter 395, chapter 397, or this chapter,  
2 as requested by such facility, as to whether or not the  
3 employee has qualified under level 1 or level 2 screening. An  
4 employee or prospective employee who has qualified under level  
5 2 screening and has maintained such continuous residency  
6 within the state shall not be required to complete a  
7 subsequent level 2 screening as a condition of employment at  
8 another facility.

9 (c) The agency shall establish and maintain a database  
10 of background screening information which shall include the  
11 results of both level 1 and level 2 screening and central  
12 abuse registry and tracking system checks. The Department of  
13 Law Enforcement shall timely provide to the agency,  
14 electronically, the results of each statewide screening for  
15 incorporation into the database. The Department of Children  
16 and Family Services shall provide the agency with electronic  
17 access to the central abuse registry and tracking system. The  
18 agency shall search the registry to identify any confirmed  
19 report and shall access such report for incorporation into the  
20 database. The agency shall, upon request from any facility,  
21 agency, or program required by or authorized by law to screen  
22 its employees or applicants, notify the administrator of the  
23 facility, agency, or program of the qualifying or  
24 disqualifying status of the employee or applicant named in the  
25 request.

26 (d) Applicants and employees shall be excluded from  
27 employment pursuant to s. 435.06.

28 (3) The applicant is responsible for paying the fees  
29 associated with obtaining the required screening. Payment for  
30 the screening and the abuse registry check shall be submitted  
31 to the agency. The agency shall establish a schedule of fees

1 to cover the costs of level 1 and level 2 screening and the  
2 abuse registry check. Facilities may reimburse employees for  
3 these costs. The agency shall, as allowable, reimburse nursing  
4 facilities for the cost of conducting background screening as  
5 required by this section. This reimbursement will not be  
6 subject to any rate ceilings or payment targets in the  
7 Medicaid Reimbursement plan.

8 (4)(a) As provided in s. 435.07, the agency may grant  
9 an exemption from disqualification to an employee or  
10 prospective employee who is subject to this section and who  
11 has not received a professional license or certification from  
12 the Department of Health.

13 (b) As provided in s. 435.07, the Department of Health  
14 may grant an exemption from disqualification to an employee or  
15 prospective employee who is subject to this section and who  
16 has received a professional license or certification from the  
17 Department of Health.

18 (5) Any provision of law to the contrary  
19 notwithstanding, persons who have been screened and qualified  
20 as required by this section and who have not been unemployed  
21 for more than 180 days thereafter, and who under penalty of  
22 perjury attest to not having been convicted of a disqualifying  
23 offense since the completion of such screening, shall not be  
24 required to be rescreened. An employer may obtain, pursuant to  
25 s. 435.10, written verification of qualifying screening  
26 results from the previous employer or other entity which  
27 caused such screening to be performed.

28 (6) The agency and the Department of Health shall have  
29 authority to adopt rules pursuant to the Administrative  
30 Procedures Act to implement this section.

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1           (7) All employees shall comply with the requirements  
2 of this section by October 1, 1998. No current employee of a  
3 nursing facility as of the effective date of this act shall be  
4 required to submit to rescreening if the nursing facility has  
5 in its possession written evidence that the person has been  
6 screened and qualified according to level 1 standards as  
7 specified in s. 435.03(1). Any current employee who meets the  
8 level 1 requirement but does not meet the 5-year residency  
9 requirement as specified in this section must provide to the  
10 employing nursing facility written attestation under penalty  
11 of perjury that the employee has not been convicted of a  
12 disqualifying offense in another state or jurisdiction. All  
13 applicants hired on or after October 1, 1998, shall comply  
14 with the requirements of this section.

15           (8) There is no monetary or unemployment liability on  
16 the part of, and no cause of action for damages arising  
17 against an employer that, upon notice of a disqualifying  
18 offense listed under chapter 435 or a confirmed report of  
19 abuse, neglect, or exploitation or an act of domestic  
20 violence, terminates the employee against whom the report was  
21 issued, whether or not the employee has filed for an exemption  
22 with the Department of Health or the Agency for Health Care  
23 Administration.

24           Section 3. Subsection (5) of section 400.211, Florida  
25 Statutes, is repealed.

26           Section 4. This act shall take effect on July 1 of the  
27 year in which enacted.

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